G. J. Aigner Company and Local 96B, Graphic Arts International Union. Case 10-CA-14663

August 11, 1981

DECISION AND ORDER

On January 29, 1981, Administrative Law Judge Robert C. Batson issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and supporting briefs, and Respondent filed an answering brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified.²

We find merit in the General Counsel's exception to the failure of the Administrative Law Judge to recommend that Respondent be ordered to bargain in good faith for a reasonable period of time after providing the Charging Party, herein also the Union, with the requested information.

As set forth more fully by the Administrative Law Judge, the Union, on August 14, 1978, was certified as the exclusive bargaining representative of Respondent's production and maintenance employees. On September 28, 1978, and thereafter, Respondent unlawfully failed and refused to supply the Union with requested information relating to the wages, holidays, vacations, benefits, holiday plans, pension plans, and insurance programs of all the employees in the unit. However, between September 1978 and May 1979, Respondent and the Union met on approximately 12–16 occasions for the purpose of negotiating a collective-bargaining agreement.

Notwithstanding that the parties had a number of negotiating sessions, Repondent's refusal to supply the requested information deprived the Union of the means by which it could intelligently bargain with Respondent as contemplated by the Act.

In John S. Swift Company, Inc., 3 the Board ordered an employer, which had violated the Act by refusing to provide relevant information requested by the union, to bargain, upon request, with the union. As here, during the certification year, the employer refused to provide information needed by the union to enable it to negotiate effectively on behalf of the employees. The Board noted:

Where litigation of unfair labor practices intervenes and prevents the certified agent from enjoying a free period of a year after certification to establish bargaining relations, it is entitled to resume its free period after termination of the litigation.

In this case, Respondent, at and after the first negotiating session, refused to supply the Union with the requested information. Thus, in order to accord the Union its right to a proper and full opportunity to exercise intelligently its statutory obligation as the exclusive bargaining representative of Respondent's production and maintenance employees, Respondent must be required to bargain, upon request, in good faith with the Union for a reasonable period of time. Only upon Respondent's both supplying the requested information and thereafter bargaining in good faith with the Union will the purposes and policies of the Act be effectuated.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, G. J. Aigner Company, Marietta, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

- 1. Substitute the following for paragraph 1(f):
- "(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act."
- 2. Insert the following as paragraph 2(b) and reletter the subsequent paragraphs accordingly:
- "(b) After compliance with paragraph 2(a) above, bargain in good faith with the aforesaid labor organization, upon its request, as the exclusive representative of the employees in the appro-

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. Standard Dry Wall Products. Inc., 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3rd Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

² In par. I(f) of his recommended Order, the Administrative Law Judge included a broad cease-and-desist order against Respondent. We find it unnecessary to impose such a broad order against Respondent. As the General Counsel has not demonstrated that Respondent has a proclivity to violate the Act, or that Respondent has engaged in such wide-spread or egregious misconduct as to demonstrate a general disregard for employees' fundamental statutory rights, a broad order is not warranted here. Hickmott Foods, Inc., 242 NLRB 1357 (1979). Accordingly, we will modify the Administrative Law Judge's recommended Order by substituting narrow cease-and-desist language for the broad language used by the Administrative Law Judge.

^{3 133} NLRB 185, 188 (1961).

⁴ In light of all the circumstances herein, including the fact that numerous bargaining sessions actually took place, we deem it unnecessary to extend the certification year for another full year. Rather, our affirmatively ordering Respondent to bargain, after otherwise complying with our Order, for a reasonable period of time is a proper and adequate remedy. Cf. Glomac Plastics, Inc., 234 NLRB 1309 (1979).

priate unit and, if an understanding is reached, embody such understanding in a signed agreement."

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT fail or refuse to furnish Local 96B, Graphic Arts International Union, any information it may request which is necessary to it to fulfill its statutory obligation as the exclusive collective-bargaining representative of our employees in an appropriate unit; specifically information relating to our employees' wages, hours, benefits, and other terms and conditions of employment.

WE WILL NOT unilaterally, and without prior notice to and consultation with Local 96B, Graphic Arts International Union, promulgate any rule requiring our employees to obtain permission from their supervisors before going to the restroom, or any other rule affecting the terms and conditions of our employees' employment.

WE WILL NOT unilaterally, and without prior notice to and consultation with, Local 96B, Graphic Arts International Union, or any other labor organization, promulagate a change in our disciplinary procedure, or any other procedure affecting the terms and conditions of our employees' employment.

WE WILL NOT suspend our employees for failing to obtain permission from their supervisors before going to the restroom.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed to them by Section 7 of the Act, including those set forth above.

WE WILL immediately furnish to Local 96B, Graphic Arts International Union, all the information it requested on and after September 28, 1978, concerning our employees' wages, hours, benefits, and other terms and conditions of employment, which information is necessary for the Union to fulfill its statutory functions as the exclusive collective-bargaining representative of our employees.

WE WILL bargain in good faith with Local 96B, Graphic Arts International Union, upon its request, as the exclusive representative of the employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL expunge from all our files all copies of all the written reprimands or warnings, written, or given to our employees, on May 10, 1978, because they failed to obtain permission from their supervisors before going to the restroom. Those employees being:

Janice Pierdon Florence P. Bates Lynn England Betty Tinsley Carolyn Goza Paula Caldwell Lena Gribble Asenth Payne Annie Moore Joyce McEver Tammy Muller Brenda Driver Debbie Roberts Mark Hill Mary Bell Melba Jean Taylor Tilda Franks Nancy Weaver Brenda Yancy Steve Nevitt

WE WILL make whole employees Carolyn Goza, Joyce McEver, Tammy Muller, and Debbie Roberts for any loss of pay or other benefits they may have sustained by reason of our discrimination against them, with interest thereon.

WE WILL, upon their unconditional offer to return to work, immediately reinstate all our employees who engaged in the strike commencing May 11, 1978, to their former positions, discharging if necessary any replacements then occupying those positions or, if those positions no longer exist, to substantially equivalent positions without loss of seniority or other benefits.

G. J. AIGNER COMPANY

DECISION

STATEMENT OF THE CASE

ROBERT C. BATSON, Administrative Law Judge: This proceeding under the National Labor Relations Act, as amended, 29 U.S.C. §151, et seq. (herein the Act), was heard by me at Atlanta, Georgia, based on a complaint issued on July 18, 1979, by the Acting Regional Director for Region 10 (Atlanta, Georgia), as further amended at the hearing, arising out of a charge filed by Local 96B, Graphic Arts International Union (herein the Union), on May 14, and amended on June 11 and July 2, alleging that G. J. Aigner Company (herein Respondent), had violated Section 8(a)(5) and (1) of the Act.

The complaint alleges that Respondent violated Section 8(a)(5) of the Act by failing and refusing to furnish the Union requested information concerning employees' wages, hours, benefits, and other conditions of employment; the unilateral promulgation and enforcement of a rule requiring all employees to obtain their supervisor's permission before going to the restroom; and the unilateral implementation, or change, in its disciplinary procedures. It further alleges that Respondent issued written reprimands to approximately 20 employees for allegedly violating its illegally promulgated and enforced rule, and suspended four employees in connection therewith in violation of Section 8(a)(1) of the Act. Alleged also as an 8(a)(1) violation of the Act are various instances of interrogation, creating the impression of surveillance of union activities, soliciting employees to attend a union meeting and report the union activities there, and threatening employees with reprisals because of their union activities.

All parties were represented by counsel or other representatives throughout the hearing and were afforded full opportunity to present evidence and arguments, and to file post-hearing briefs. Briefs have been received from counsel for the General Counsel and Respondent.

Upon the entire record in this case, including my observations of the testimonial demeanor of the witnesses testifying under oath, and consideration of helpful posthearing briefs filed by the parties, and upon substantial reliable evidence, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

G. J. Aigner Company is a Delaware corporation with a facility located at Marietta, Georgia, where it is engaged in the manufacture and printing of loose leaf indexes. During the 12-month period immediately preceding the issuance of the complaint herein, which period is representative of all times material herein, Respondent sold and shipped to points located directly outside the State of Georgia goods and products valued in excess of \$50,000.

The complaint alleges, Respondent admits, and I find that, at all times material herein, Respondent was an employer as defined in Section 2(2) of the Act, and engaged in commerce and in activities affecting commerce as defined in Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, Respondent admits, and I find that Graphic Arts International Union, Local 96B, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

Respondent employs, at its Marietta, Georgia, facility, approximately 50 employees. Based on the tally of ballots issued as a result of a Board-conducted election held on August 4, the Union was certified on August 14, as the exclusive bargaining representative of Respondent's production and maintenance employees.²

At the request of the Union, the parties, i.e., Respondent herein and the Union, met for their first negotiating session on September 28. Between that time and May 7, 1979, the parties met on approximately 12 to 16 other occasions for the purpose of negotiating a collective-bargaining agreement. Throughout the negotiations, Truitt Crunkleton, the local president of the Union, and an employee committee composed the Union's negotiating committee. Present at one of the meetings was one of the Union's International vice presidents, Edward Donahue. Also present on behalf of the Union at some of the meetings were Union Business Representatives Greg Hanson and Walt Barber. At all meetings between September 28 and January 12, Respondent's chief negotiator was Clyde Aigner, executive vice president. After that time, the Company's attorney, Walter O. Lambeth, Jr., was chief spokesman for the Company. Also present at essentially all the meetings were Respondent's production manager, Albert Valencia, and its plant manager, Dale Osberg, both of whom made notes of the meetings.

A. The Refusal To Furnish Requested Information to the Union

At the first meeting, on September 28, Truitt Crunkleton requested information from Respondent relating to wages, holidays, vacations, benefits, holiday plans, pension plans, and insurance programs of all the employees in the unit.³

Crunkleton testified that he renewed this request for information at essentially all the subsequent meetings to May 11, and that in November he prepared a written re-

¹ Unless otherwise indicated, dates occurring in months August through December shall be read as 1978, and all dates occurring in months January through July shall be read as 1979.

² The appropriate unit is:

All production and maintenance employees including quality control inspectors employed by the Respondent at its Marietta. Georgia, plant, but excluding all office clerical employees, professional employees, guards and supervisors . . . as defined in the Act.

³ According to Aigner, Crunkleton stated:

Down the road we would like from you, under NLRB regulations, the following data: . . . vacation plans, holiday plans, pension plans, insurance programs and wages, a list of all the employees and their wages.

Albert Valencia also testified, in accord with Aigner, that Crunkleton requested such information at the meeting. However, Dale Osberg, Respondent's plant manager, also present, could not recall any request for information until the October 9 meeting.

quest which he gave to Business Representative Hanson to deliver to Respondent at the December 4 meeting. On April 30, Crunkleton wrote to Respondent's Chairman of the Board complaining that the information which had been requested had not been supplied. Respondent admits receipt of the April 30, letter from Crunkleton but, impliedly, denies that it received the December 4, written request. In substance, Respondent's position is that Crunkleton never repeated his September 28 request for the information.

Aigner testified that after the September 28 meeting he prepared the information Crunkleton sought and carried it with him to all the subsequent meetings which he attended until sometime in January, and that Crunkleton never renewed the request and, accordingly, he did not supply it.

Crunkleton testified that at the November 9 meeting, when he made the request for the information, Respondent's representative, Jack Lee, told him that he already had the information, which Crunkleton denied.

According to Crunkleton, when he renewed his request for information in January, Respondent's attorney, who then had become its chief negotiator, questioned him as to why he needed the information.

Respondent's first defense appears to be that Crunkleton's initial request was couched in language that it viewed as a request for future supply of information. And, secondly, it appears to contend that at the first meeting an informal agreement was reached to consider and dispose of noneconomic issues prior to negotiating economic issues, and that there was no need to supply the information until the parties commenced negotiating with respect to economic issues.

In its brief, Respondent cites no Board or court cases in support of these contentions. Respondent admits that it did not supply all the information requested by the Union. With respect to Respondent's first contention, i.e., that the Union's request for information at the first meeting was couched in terms of something that it would want in the future, and it was not required to supply the information until the Union renewed the request, I find Crunkleton's testimony with respect to renewing the request to furnish information at subsequent meetings to be far more credible than the denials of Aigner, Valencia, and that of Dale Osberg that the request was made on October 9, only. While there is no dispute that there was an informal agreement that noneconomic issues would be considered prior to negotiating economic issues, I am persuaded, in accordance with Crunkleton's testimony, that there was discussion of economic issues at subsequent meetings.

On direct examination, Aigner, Valencia, and Osberg testified to the effect that, each time a subject was brought up with respect to an economic term of the contract, Crunkleton would say "that's economic, let's get rid of the contract language first." However, upon cross-examination based on a pretrial affidavit, Valencia admitted that wages had been discussed as early as October 10, when brought up by the Company, and again as late as April 1979. He also admitted that there were wage proposals and counterproposals discussed at some meetings as well as discussions concerning seniority. Similar-

ly, Osberg, when being cross examined on notes he had prepared during the negotiating sessions, admitted, in accordance with the notes, that subjects such as wages, seniority, working hours, job transfers, and so forth had been discussed at a number of meetings. Neither Osberg's notes nor Valencia's pretrial affidavit suggests that Crunkleton refused to discuss these issues.

It is highly unlikely that an experienced union negotiator such as Crunkleton would endeavor to discuss items such as wages, seniority, working hours, job transfers, etc., without renewing his request for the information necessary for the Union to fulfill its statutory obligations as the collective-bargaining representative of the employees. Accordingly, I find that Crunkleton renewed his request for this information on at least several occasions during the negotiations. Even if this were not so, Respondent does not endeavor to explain why it did not respond to Crunkleton's April 30 letter to its chairman of the board and supply the information that had previously been requested, until the following November or December.

With respect to Respondent's second defense, i.e., that the Union had no need for the information until it commenced negotiations of economic issues, it is well settled that an employer is obligated to furnish to the representative of its employees information which is reasonably necessary to enable it to perform its representative functions intelligently.⁴

It is clear that the "representative function" of a collective-bargaining representative is far broader than merely negotiating economic terms of a contract. Satisfaction of this duty requires not only that the information ultimately be furnished, but also that the employer supply it with reasonable promptness.5 Although the Union's request may have been phrased in general terms, they make clear the nature of some, if not all, of the information requested and Respondent did not ask for clarification of the request. Accordingly, I find that Respondent violated Section 8(a)(5) and (1) of the Act, by failing and refusing to furnish the Union the information which it requested which was necessary to the performance of its representative function as the collective-bargaining representative of its employees in an appropriate unit.

B. Alleged Unilateral Changes in Terms and Conditions of Employment

On May 7, Plant Manager Dale Osberg assembled the employees and, after reminding them to remain at their work stations during the "5-minute cleanup period," stated:

⁴ N.L.R.B. v. The Item Company, 220 F.2d 956, 958 (5th Cir. 1956), cert. denied 350 U.S. 836; N.L.R.B. v. Whitin Machine Works, 217 F.2d 593 (4th Cir. 1951). N.L.R.B. v. Yawman & Erbe Manufacturing Company, 187 F.2d 947, 949 (2d Cir. 1951), and Sylvania Electric Products. Inc., 154 NLRB 1756 (1965), enfd. 358 F.2d 591 (1st Cir. 1966).

⁵ B. F. Diamond Construction Company, Inc., and Diamond Manufacturing Company, Inc., 163 NLRB 161, 175 (1967), enfd. 410 F.2d 462 (5th Cir. 1969). The Employer's failure or undue delay in supplying such requested information to the Union is a per se violation of Sec. 8(a)(5) of the Act. See also Curtiss-Wright Corporation. Wright Aeronautical Division v. N.L.R.B., 347 F.2d 61, 68-69 (3d Cir. 1965).

Next is the problem of the usage of our restroom facility. These facilities have been provided for the obvious purpose, *not* as a place to take an extra break. Use the facilities and return immediately to your work areas.

From now on, if you have to use the facilities, attain [sic] permission from your supervisor first (people abusing rules). He or she (supervisor) is responsible for the whereabouts of their people at all times during the workday. The supervisor will then have you relieved on your machine or work areas (if necessary).

Respondent admits, by Plant Manager Osberg and Production Manager Valencia, that never, before this time, had employees been required to obtain permission from their supervisor to go to the restroom. Apparently the employees on the second shift, on May 7, and the employees on the first shift, on May 8, complied with this new requirement. However, when the second-shift employees reported for work on May 8, some of them commenced openly disobeying the "new rule" and several employees told their supervisor that they would refuse to request permission before going to the restroom, with one stating such requirement was "against the law." Also on May 9, some of the employees continued to refuse to request permission to go to the restroom and some apparently requested permission.

On May 10, Plant Manager Osberg was called out of town, but he left instructions with Production Manager Valencia to reassemble all employees on that date and remind them of the company policy concerning not leaving their work stations without the permission of their supervisor, which included going to the restroom. Valencia was also instructed to tell the employees that, if they persisted in refusing to obey these instructions, the Company would issue a written warning for the second instance of disobedience (apparently the first instance of such failure to comply with the rule would result in a verbal warning), and a 3-day disciplinary suspension for the third violation, with discharge being the penalty for any fourth violation. Valencia so informed all of the employees at or about 7:30 a.m.

On that day, Valencia commenced preparing and issuing written warnings to employees for failing to ask for permission to go to the restroom although, as discussed more fully below, the warnings were couched in terms of "being away from their work station without permission of the supervisor, and obedience." Apparently 8 of the some 20 warnings, some of which constituted written warnings, and four of which constituted 3-day suspensions, were handed out on May 10. Respondent contends that the remaining 12 were not given to the employees on that date because they had already left the plant and it decided not to give the written warnings to them on May 11, but instead simply to retain them in their personnel files, from which they were subpensed for this hearing.

Respondent admits the foregoing facts as found but contends that, for several years preceding the certification of the Union, it had in effect policies prohibiting employees from loitering in the restroom and requiring em-

ployees to be at their work stations except during the authorized lunch and break periods. Thus, Respondent argues that it did not implement a new rule of employee conduct but merely a change in its enforcement policy of rules requiring the employees to be at their work stations except with permission of their supervisors. 6

The General Counsel contends that Respondent's conduct on May 7 constitutes a unilateral implementation of a rule affecting the employees' terms and conditions of employment and that its conduct on May 10 constitutes a unilateral institution, or change, in its disciplinary procedure, both of which violates Section 8(a)(5) and (1) of the Act.

As noted, Respondent admits this conduct and that the disciplinary warnings and suspensions awarded to the employees on May 10 were for their having left their work station to go to the restroom without the permission of their supervisor.

Respondent argues that what necessitated the change in its method of enforcement of existing policies was the abuse of those policies by the employees. Specifically, it argues that (1) excessive absenteeism and tardiness, (2) the lack of cooperation of the employees and "militancy and belligerence," (3) "employees wandering away from their work stations and loitering in the restrooms" had eroded management control in late April and May to the point where it felt that the employees were running the plant rather than the supervisors. At the hearing the counsel for the General Counsel subpensed all written warnings, whether constituting an oral warning or a written warning, which had been issued to employees since the beginning of 1978. Although the record does not reflect the number of verbal or written warnings which had been issued during that time, it appeared from the bulk of materials submitted to the General Counsel that there were many. Upon cross-examination, Valencia admitted that during this period of time only two verbal warnings had been issued to employees for spending too much time in the restroom, and one verbal warning had been given to an employee for being away from her work station.

The inference to be drawn from the existence of these written warnings is two-pronged. First, it establishes that in the Employer's disciplinary procedure it had created the creature of at least a verbal warning reduced to writing, for "loitering," spending too much time in the restroom (2), and for being away from an employee's work station (1). The other prong, however, tends to cast doubt on Respondent's contention that the incidence of loitering in the restrooms and being away from work stations had dramatically increased during the 2- or 3-month period immediately preceding the promulgation of the rule that was announced on May 7, and the method of enforcement of that rule on May 10. It should be

⁶ Respondent had an employee handbook which set forth numerous rules of conduct but none of which deals with a request for permission to go to the restroom, or the requirement that an employee be at his work station without the permission of his supervisor. Nor does the rule book contain any progressive disciplinary procedure as enacted by the employer on May 10, and does not deal with any type of disciplinary action against an employee involving suspension, although it describes disciplinary procedures; i.e., discharge.

noted that neither of these rules deals with other alleged abuses the employer alluded to; i.e., absenteeism, tardiness, lack of cooperation, militancy, and belligerance. If the abuses of restroom privileges and leaving ones work station had increased so dramatically during that 2-month period, it would appear that the incidence of issuing, at least, written verbal warnings for such abuses would have also dramatically increased.⁷

Accordingly, I am constrained to conclude that, even if a justified business reason was a defense for the unilateral promulgation of new rules, or the more stringent enforcement of existing rules, the Respondent has not established that there was any business justification for its conduct on May 7 and 10.

As heretofore noted, Respondent makes no contention that it had ever promulgated a requirement that its employees obtain permission from their supervisor before going to the restroom. Nor, apparently, does it contend that employees had ever been issued written reprimands, couched in terms of disobedience and insubordination, by failing to obtain permission of their supervisor to leave their department and go to the restroom. Thus, clearly, the promulgation of this rule on May 7, and the manner in which it was enforced on May 10, constitutes a clear departure from any past practice. The fact that its employees were abusing restroom privileges and, according to Respondent, wandering away from their work stations, and there was a necessity to take some measures to correct these abuses, does not mean that the Employer may ignore its employees' collective-bargaining representative and unilaterally impose the degrading rule that required its employees to obtain their supervisor's permission to go to the restroom, and enforce it by a departure from its past practice of correcting disciplinary problems. It is noted that in the year and a half prior to the implementation of this rule, Respondent had issued two verbal warnings which were reduced to writing to employees for remaining too long in the restroom.

In Murphy Diesel Company, 184 NLRB 757, 762 (1970), the Board adopted the administrative law judge's conclusion that, "Plant rules, particularly where penalties are prescribed for their violation, clearly affect conditions of employment and are mandatory subjects of collective bargaining." In that case the employer had unilaterally imposed a seven-step disciplinary procedure to correct the problem of absenteeism, replacing its former lax system. Murphy was quoted with approval in Boland Marine & Manufacturing Company, Inc., 225 NLRB 824, 829 (1976), where it was stated, "The institution or alteration of a disciplinary system is itself a mandatory subject of bargaining." In N.L.R.B. v. Benne Katz. d/b/a Williamsburg Steel Products, 369 U.S. 736, 743 (1962), the Supreme Court stated that the core of an 8(a)(5) violation was "a circumvention of the duty to bargain" as much as a flat refusal.

It is clear that Section 8(a)(5) of the Act, and the Board and court case law concerning this subject, is designed to prevent exactly this type of unilateral implementation of, or change of, rules drastically affecting employees. Accordingly, I find that Respondent has violated Section 8(a)(5) by the promulgation of the rule on May 7, and the institution of a new disciplinary procedure for enforcing that rule on May 10, and it shall be ordered to rescind these actions and cease and desist therefrom hereafter.

C. The Written Warnings and Suspensions For Violating the May 7 Rule

As heretofore noted, Respondent admits that, on May 10. Production Manager Valencia advised the employees that henceforth, if they failed to obtain permission to go to the restroom from their supervisors, they would receive a verbal warning for the first violation, a written warning for a second violation, a 3-day suspension for a third violation, and discharge for the fourth violation. On that date also, Respondent admits that Valencia prepared approximately 20 reprimands, 4 of which constituted a 3-day suspension. It issued the reprimands to 8 of its employees on that date and contends that the remaining 12 employees were not issued reprimands that date because they had already left the plant. Respondent contends that the other 12 reprimands were never given to the employees; however, when subpensed for hearing, Respondent said that it obtained the reprimands from its personnel files. The retention of these unissued reprimands in the personnel files, in my view, is equivalent to issuing them to the employees.

By issuing these verbal warnings, reduced to writing, and written 3-day disciplinary layoffs to its employees, named in the recommended Order herein, imposed pursuant to its unlawfully promulgated disciplinary procedure for violating its unlawfully promulgated rule requiring the employees to obtain permission from their supervisor before going to the restroom, Respondent has violated Section 8(a)(1) of the Act, as alleged. It shall be ordered to cease and desist therefrom and to expunge all written material from all its files concerning these incidents and to make each of the suspended employees whole for any loss of earnings they may have sustained as a result of their disciplinary layoff, with interest thereon, as prescribed in the section of this Decision entitled "The Remedy."

D. The Nature of the June 11 Strike

The complaint alleges that the strike among Respondent's employees which commenced on May 11 was caused and prolonged by the unfair labor practices as alleged in the complaint, and as found above in this Decision. Respondent contends that the General Counsel has failed to show a causal connection between the strike and its refusal to furnish the information requested by the Union or, assuming that it unilaterally implemented a new rule and a new procedure of disciplinary action, that these acts were not the motivating cause of the strike.

⁷ Respondent argues that the tardiness of the employees which had increased for the past couple of months was, in part, due to their attendance at union meetings, and that it had admonished them in that respect. While there is evidence that employees were frequently as much as 2 hours late getting to work, because they had been attending a union meeting, it is noted that the rule announced by Respondent on May 7 did not deal with tardiness.

According to Crunkleton, and undisputed by any other testimony or evidence, about a week before May 11, at a union meeting of employees of Respondent, he discussed with the employees the progress of negotiations, and the fact that Respondent had still not furnished him with the information he had sought regarding their wages, classifications, dates of hire, etc. It may be assumed that other topics were discussed. Be that as it may, the employees voted on the question of whether or not to authorize Crunkleton to call a strike at his discretion. It is undisputed that they voted affirmatively on the question.

On May 10, Crunkleton was not at his office, due to illness, but he received a telephone call from his secretary, who advised him that Respondent had started issuing written reprimands and suspensions to employees who did not obtain permission from their supervisor before going to the restroom. Apparently, she related to him an instance where the enforcement of this rule had caused an embarrassing situation for at least one employee. According to Crunkleton, he dictated a letter to his secretary who was instructed to distribute it to the employees the following day. The letter advised the employees that, in accordance with their strike vote, he, Crunkleton, was calling a strike for noon on May 11, and expressed the view that the May 7 rule was the straw that broke the camel's back. The letter also referred to other "unfair labor acts," including Respondent's refusal to furnish employment data the Union had requested. On May 11, at noon, substantially all of Respondent's unit employees concertedly ceased work, and commenced a strike, by setting up a picket line at Respondent's prem-

As Respondent argues, for a strike to be an unfair labor practice strike, there must be a causal connection between the unfair labor practices and the commencement of the strike. Filler Products, Inc. v. N.L.R.B., 376 F.2d 369 (4th Cir. 1967). However, under well-settled law, "a strike is an unfair labor practice strike if only one cause, even if not the primary cause, was the employer's unfair labor practices, notwithstanding the presence of economic issues." National Fresh Fruit & Vegetable Company, etc., 227 NLRB 2014, 2017 (1977), cited by the administrative law judge and affirmed by the Board in Pick-Mt. Laurel Corporation, 239 NLRB 1257 (1979) [revoked by 259 NLRB No. 34 (1981)]. While the lack of progress in the negotiations may well have been a factor considered in deciding to strike, it is evident here that the primary motivating factor was the Employer's promulgation of the rule requiring its employees to obtain supervisory permission before going to the restroom, and the enforcement of that rule by the issuance of written reprimands and suspensions, both of which have been found to be unfair labor practices. In addition thereto, it is clear that, at the meeting at which the strike vote was taken, Crunkleton reported to the employees that Respondent had still not furnished the employee data that he had earlier requested. Accordingly, I find that the strike which commenced on May 11, 1979, was caused and prolonged by the unfair labor practices found above.

E. Independent 8(a)(1) Allegations

The complaint alleges that Supervisor Wendy Williams solicited employees to attend a union meeting and report back to her the union activities there. Employee Stewart Saine testified in support of this allegation. Saine testified that, in February (after having his memory refreshed by his pretrial affidavit), he and Lynn England were at the plant with Wendy Williams. His relevant testimony in support of this allegation is:

We discussed if we should go to the union meetings or not. We were told it was up to us, that we could either attend meetings, or couldn't whichever way we wanted. It was OK with the company if we attended the union meetings because we hadn't, at the time, joined the union.

He was then asked if anything else was said, and replied, "It was mentioned, you know, if we wanted to go we could go and if we wanted to come back we could come back and tell anything we found out."

Wendy Williams testified essentially in accord with Saine, but stated that, when the employees decided to go to the meeting, it was Lynn England who volunteered to return and report to her what went on there. Williams testified that she made no reply to England's suggestion. England was not called to testify.

In my opinion, Saine's testimony fails to support this complaint allegation. His testimony that "it was mentioned" is too vague and ambiguous to attribute the request to Williams, especially in view of Williams' credible testimony that it was England who volunteered to return and report to her what had occurred at the meeting. Accordingly, I recommend that this allegation be dismissed.

The complaint alleges that Respondent's director of quality assurance, Phil Chandler, who works out of Respondent's headquarters at Chicago, created the impression of surveillance of employees' union activities.

Former employee Ruth Taylor, a quality control inspector, testified to a series of three telephone conversations with Chandler. The General Counsel admits that the first two conversations took place outside the period proscribed by Section 10(b) of the Act, but urges that they should be considered as evidence of Chandler's antiunion sentiments and that the third conversation, which the General Counsel argues occurred within the 10(b) period, should be placed in context. According to Taylor, Chandler telephoned her near the end of August, and asked her if she had signed a union card. When she replied affirmatively, Chandler allegedly told her that he could bring her along better financially with Respondent if she did not belong to the Union. Taylor testified to another telephone conversation with Chandler in October, wherein Chandler told her that he had been told that Taylor was working for the Union. As noted, these conversations are admitted to be outside the statute of limitation and an order may not issue based upon them.

The conversation here alleged to violate the Act occurred, according to the General Counsel, in mid-November 1978 when, according to Taylor, Chandler called

her and told her that it had been reported to him that Taylor had been working strongly for the Union. Taylor's testimony with respect to the precise date on which any of these alleged telephone conversations occurred is one of extreme uncertainty. However, with respect to the last conversation, she testified that it occurred "a couple of weeks after my father died." Again, on cross-examination, she testified that her best recollection was that the date was 2 weeks after her father died. The record establishes that her father died on October 18, 1978. Two weeks later would have been approximately November 1. The charge was filed on May 14, 1979, a period of more than 6 months after the date of the alleged occurrence.

Accordingly, in my opinion, the General Counsel has failed to establish that the conversation, alleged as having occurred in mid-November, in fact occurred on that date or within 6 months before the charge was filed.

However, in the event a reviewing tribunal finds the conversation occurred within the "Section 10(b)" period, I shall consider Chandler's version. Chandler testified that, as quality control director, he had a number of conversations with Taylor, in only one of which was the Union discussed. Chandler testified that in the summer of 1978 he had a telephone conversation with Taylor wherein:

I expressed from my standpoint that it was generally easier for me to run a quality control program and work with quality control people when they were nonunion, and I also expressed that this was up to the individual, of course, but that was my own personal feelings. Because of the nature of my quality control business, it was easier to operate that way.

He denies any further conversation with Taylor.

In my opinion, the General Counsel has again failed to sustain the allegation. According to Taylor's testimony, in August she told Chandler, upon his interrogation of her, that she had signed a union card. In the October conversation, Taylor testified that she denied to Chandler that she was working for the Union.

On balance, notwithstanding the fact that the latter conversation, here alleged as an impression of surveillance of union activity, may have occurred within 6 months of filing of the charge herein, I find Chandler's version of his conversation with Taylor to be more probable. I so find and conclude, and shall recommend that the complaint be dismissed in this respect.

The complaint alleges that Printing Supervisor Ed Karasinski, on or about April 5, 1979, threatened employees with discharge if they joined, or engaged in activities on behalf of, the Union. Ruth Taylor, who left Respondent's employ in April or May 1979, testified in support of this allegation.

According to Taylor, about a month before she left Respondent's employ, Karasinski came to her office where she told him of an incident occurring a couple of days earlier when Production Manager Valencia had apparently been critical of her. Taylor testified that Karasinski told her, "Well, I wouldn't be concerned with this

union business." Taylor told him she was not concerned with it. Karasinski then stated, "Well, you know Al is out to get you. He's on your case."

Karasinski denied Taylor's version of this conversation. According to him, Taylor told him of an incident involving Valencia, and remarked that "she felt Al was out to get her, that he was on her case." Karasinski replied that if she conducted herself "along company policies," she should not have any trouble with Valencia and he was sure "Al" was not on her case.

As indicated above, Taylor testified with some uncertainty as to dates, and her testimony concerning this incident was not convincing. I find it more probable that, in complaining to Karasinski about Valencia, it was Taylor, not Karasinski, who expressed the view that Valencia was "out to get her," and was "on her case." Accordingly, I recommend that this allegation be dismissed.

IV. THE EFFECTS OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of Respondent set forth above in connection with its business as set forth in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to disputes and obstruction of the free flow of commerce.

CONCLUSIONS OF LAW

- 1. Jurisdiction by the Board is properly asserted in this proceeding.
- 2. All production and maintenance employees including quality control inspectors employed by Respondent at its Marietta, Georgia, plant, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.
- 3. At all times since August 14, 1978, the Union has been, and is, the duly designated collective-bargaining representative of the employees in the unit described above, within the meaning of Section 9(a) of the Act.
- 4. By failing and refusing, since on or about September 28, 1978, timely to furnish the Union with information concerning Respondent's employee wages, benefits, working hours, paid holidays, vacation, and job classifications, which the Union requested on that date, and which information is necessary for the Union to perform its statutory function as a collective-bargaining representative of the employees in the unit set forth above; unilaterally and without notice to, or consultation with, the Union, promulgating and thereafter maintaining and enforcing a rule requiring all employees to obtain permission from their supervisor before leaving their work place to use restroom facilities; unilaterally and without notice to, or consultation with, the Union, promulgating and enforcing a change in its disciplinary procedures, Respondent has violated Section 8(a)(5) of the Act.
- 5. By issuing written reprimands to its employees named in the appendix hereto [omitted from publication] on or about May 10, 1979, pursuant to enforcement of its ulawfully promulgated rules on May 7 and 10, and sus-

pending its employees Carolyn Goza, Joyce McEver, Tammy Muller, and Debbie Roberts for 3 working days, Respondent has violated Section 8(a)(1) of the Act.

- 6. The strike which commenced among Respondent's employees on May 11, 1979, was caused and prolonged by the unfair labor practices found above.
- 7. Respondent has not been shown to have violated the Act in certain particulars set forth in the Decision above.

THE REMEDY

Having found that Respondent has committed acts in violation of Section 8(a)(5) and (1) of the Act, it shall be ordered to cease and desist therefrom, and from any other unlawful activity, and to take certain affirmative actions designed to effectuate the purposes of the Act. Such affirmative actions shall include the posting of the usual informational notice to employees, and the action to make whole the employees who were laid off by it on May 10, 1979, for any losses they may have sustained as a result of the layoff with interest thereon to be computed in the manner prescribed in F. W. Woolworth Company, 90 NLRB 289 (1950), and Florida Steel Corporation, 231 NLRB 651 (1977).

Upon the foregoing findings of fact, conclusions of law, and the entire record in this case, and pursuant to Section 10(c) of the Act, I issue the following recommended:

ORDER9

The Respondent, G. J. Aigner Company, Marietta, Georgia, its officers, agents, successors, and assigns, shall:

- 1. Cease and desist from:
- (a) Failing and refusing to timely furnish the Union the information which the Union requested on September 28, 1978, concerning unit employees' wages, benefits, working hours, holidays, vacation, and job classifications, which information is necessary for the Union to perform its statutory obligation as collective-bargaining representative of the employees in the appropriate unit.
- (b) Unilaterally, and without notice to, or consultation with, the Union, promulgating any rule affecting its employees' terms and conditions of employment, specifically requiring its employees to obtain supervisory permission before going to the restroom.
- (c) Unilaterally, and without notice to, or consultation with, the Union, implementing and enforcing a change in its disciplinary procedure, specifically the issuance of written warnings and layoffs to its employees.

- (d) Issuing written reprimands to its employees pursuant to its unlawfully promulgated rules requiring employees to obtain permission from their supervisor before going to the restroom.
- (e) Suspending its employees for failing to obtain permission of their supervisor before going to the restroom.
- (f) In any manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.
- 2. Take the following affirmative action designed to effectuate the purposes of the Act:
- (a) Furnish the Union, to the extent that it has not already done so, the information which it requested on September 28, 1978, concerning employees' wages, hours, and other terms and conditions of employment, which information is necessary for the Union to perform its statutory function as collective-bargaining representative of the employees in the appropriate unit.
- (b) Expunge, from all personnel records and files and any other records, all copies of the written reprimands issued to its employees pursuant to its unlawfully promulgated rule on May 10, 1979.
- (c) Make whole all its employees for any losses they may have sustained as a result of their layoff on or about May 10, 1978, by payment to each of them the sum of money they would have earned during such layoff, less each employee's net earnings during this period, with interest thereon computed in the manner set forth in the section of this Decision entitled "The Remedy."
- (d) Upon their unconditional return to work, immediately reinstate each of the striking employees to their former positions, discharging if necessary any replacements occupying those positions or, if those positions no longer exist, to substantially equivalent positions without any loss of seniority or other benefits to which they are entitled.
- (e) Post at its office and place of business copies of the attached notice marked "Appendix." Ocipies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's representative, shall be posted immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.
- (f) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

It is further ordered that the complaint, insofar as it alleges violations not found above to have occurred, is hereby dismissed.

⁸ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).
⁹ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

¹⁰ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."